

Appl. No. 10/088,432

Response dated July 8, 2004

Reply to Non-Final Office Action of March 9, 2004

REMARKS

Claims 13-31 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting over claims 18-26, 31 and 33-36 of Applicants' copending Application Serial No. 10/088,247. In response hereto, Applicants submit herewith a terminal disclaimer in compliance with 37 CFR 1.321(c). Accordingly, Applicants respectfully submit that this provisional rejection may now be withdrawn.

Applicants respectfully request reconsideration of the rejection of claims 13, 15-21 and 24-26 under 35 USC 103(a) as being obvious in view of Bernard et al. (US 6,274,364). No amendments have been made to the claims at this time for the reasons presented below. It is respectfully submitted that Bernard et al. do not disclose or teach compositions and processes for the treatment of hair.

Bernard et al. relate to the treatment of skin, specifically to treatments for reducing intercorneocyte cohesion which, in turn, facilitates desquamation (please refer to col. 1, lines 19-20). The reference does not disclose or teach formulations for treating (specifically, restructuring) *keratin fibers*. Transglutaminase activity is specifically directed to the treatment of skin (please refer to col. 7, lines 4-16). Furthermore, while shampoos, dyeing formulations and hair restructuring lotions are mentioned (col. 8, lines 15-24), it is only for the purpose of showing the different types of formulations into which

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the skin treatment compositions of Bernard et al. may be blended. The skin treatment formulations of the reference may be blended with a variety of different cosmetic treatments to facilitate application. The focus of the compositions and processes of Bernard et al. is not the treatment of keratin fibers, but rather skin. The patentees merely teach that their skin treatment formulation may be blended and applied with other cosmetic treatments, including hair care formulations. But, they do not disclose or teach that their formulations are useful for hair treatment.

Reconsideration is respectfully requested of the rejection of claims 14, 21-23 and 27 under 35 USC 103(a) as being obvious over Bernard et al. ('364) in view of McDevitt et al. (US 6,051,033). Applicants respectfully submit that this secondary reference fails to overcome the deficiencies of the primary reference. The objective of the formulations and methods of McDevitt et al. is to prevent shrinkage in wool and related animal hair fibers. It does not disclose, teach or even suggest that these formulations and methods may be used to restructure keratin fibers.

McDevitt et al. require a combination of two enzymes (kindly refer to col. 2, lines 46-47). The purpose of one of these enzymes, the proteolytic enzyme, is "for breaking down the surface structure [of the keratin fiber]" (please refer to col. 2, lines 49-50). The other enzyme, the transglutaminase, is to aid in the process of forming the amide bonds found in keratin fibers.

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In contrast, the objective of the restructuring compositions and processes of Applicants' claimed invention is to fortify or build up the keratin structure. The "active substance having substrate activity for the enzyme (the transglutaminase)" is added to the keratin fiber in such a way that it forms "a kind of membrane around the hair" (kindly refer to page 3, lines 8-14 of the specification, as filed). Thus, the two component composition of Applicants' claimed invention builds up, or "restructures" the keratin fibers. The two enzyme system of McDevitt et al. is not only different compositionally from Applicants' formulation, but it clearly is designed to achieve a different result.

With respect to the issue that has been raised pertaining to a distinction between calcium-dependent and calcium-independent transglutaminase, McDevitt et al. are silent on this point. However, it is respectfully submitted that in view of the differences already shown between both the Applicants' claimed invention and the '364 reference, this issue should be moot.

It is respectfully submitted that a process and formulation directed at restructuring keratin fibers clearly cannot be held as being obvious to one skilled in the art over the combined teachings of a disclosure directed at the treatment of skin (Bernard et al.) and a disclosure directed at preventing shrinkage in wool (McDevitt et al.). There is no motivation to combine these

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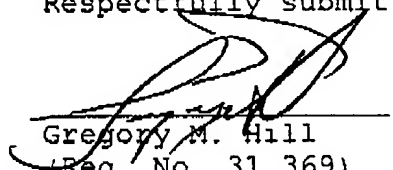
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references within the context of Applicants' claimed invention.

CONCLUSION

In view of the amendments and remarks above, Applicants ask for reconsideration and allowance of all pending claims. Applicants further ask for extension of the period for response to be extended one month to July 9, 2004 and authorize a charge to Deposit Account No. 01-1250 in the amount of \$ 110.00 for the extension fee. Order No. 04-0246. Should any fees be due for entry and consideration of this Amendment that have not been accounted for, the Commissioner is authorized to charge them to Deposit Account No. 01-1250.

Respectfully submitted,


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